IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

(Chapter VIII, Rule 32(2) (b)

Description of Case.

Criminal Appeal No. 158 of 2007
(Old No. 276/1985)

Date of decision :- 17th November, 2007

A.F.R. (Approved for reporting)

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~~Not approved for reporting~~

Date :- 17.11.2007 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal Appeal No. 158 of 2007
(Old No. 276 of 1985)

Dhirendra Kumar @ Dhiroo
S/o Rajendra Prakash Sharma
R/o Village Birauri
Police Station Cantt.
District Dehradun ...Appellant

Versus

State ... Respondent

Mr. Lalit Sharma, learned Amicus Curiae for the appellant.
Mr. G.S. Sandhu, learned Government Advocate for the respondent-State.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity as Cr.P.C.), is directed against the judgment and order dated 14.12.1984, passed by learned Additional Sessions Judge, Dehradun in Sessions Trial No. 64 of 1983, whereby the appellant has been convicted & sentenced to undergo imprisonment for life under section 302 Indian Penal Code, 1860 (for brevity as I.P.C.).

2. The prosecution story, in brief, is that Mani Ram lodged a report Ex.Ka.2 on 02.04.1983 at about 9:05 a.m. at police station Cantt, Distt. Dehradun, alleging therein that his son Surat Singh was a contractor. On the day of Holi, in the year 1983, his son Surat Singh went to celebrate Holi at the residence of accused/appellant Dhirendra Kumar Sharma alias Dhiroo in the evening. In the night, the accused/appellant came to his house and wanted to drag Surat Singh out from the house. The accused/appellant told

that Surat Singh while celebrating holi had knocked the doors of his aunt Km. Sunita in the night with evil intention when she was alone in her house. Thereafter, Smt. Raj Kumari, wife of Surat Singh and Mani Ram, father of the Surat Singh prevented the accused/appellant from dragging Surat Singh. The accused/appellant left the house of Surat Singh after giving him threats of dire consequences. It was further alleged that on 01.04.1983, Surat Singh went Dehradun but did not return home till night. Thereafter, the informant started to search out his son Surat Singh in the morning. Jagdish Singh told him that his son was lying dead near the bank of river adjoining to the field of Ratan Singh. His bicycle was also lying there. Hearing this, the informant went to the place of occurrence and saw his son Surat Singh lying dead. When he inquired about this, he was informed by Lal Singh PW2 of village Jantanwala that in the last night at about 7:45 P.M., his son the deceased Surat Singh and accused/appellant came from Dehradun; the deceased took his bicycle from his bicycle stand and they proceeded towards their village. Thereafter, the complainant Mani Ram was informed by Lakhi Ram PW4 and Bahadur Singh PW3 that they saw accused/appellant beating his son Surat Singh by stone at about 8:30 p.m. in the last night. He has further stated in the F.I.R. that his son was murdered by the accused/appellant. On the basis of F.I.R. Ex.Ka.2, chick F.I.R. Ex.Ka.14 was prepared and necessary entry was made in the G.D. The investigation of the case was entrusted to S.O. Rajpal Singh PW11. S.I. Satendra Singh Sirohi PW9 arrested the accused/appellant on 02.04.1983 and prepared the inquest report. As there were marks of injuries on the person of the accused, the accused/appellant was sent to Doon Hospital for medical examination. The I.O. recorded the statement of the

witnesses and prepared the site plan Ex.Ka.17. After completing the investigation, the police submitted the chargesheet Ex.Ka.24 against the accused/appellant before the court.

3. After submission of chargesheet, the accused/appellant was committed to the court of Sessions for trial and the trial court framed charge u/s 302 I.P.C. against the accused/appellant. The accused/appellant denied the charge levelled against him and claimed his trial.

4. The prosecution in support of its case examined as many as twelve witnesses. Dr. D.M. Kala PW1 is the medical officer who has medically examined the accused/appellant. Lal Singh PW2 is the witness who has stated that the accused/appellant and the deceased Surat Singh came to his shop in the evening on 01.04.1983 at about 7:30 to 7:45 p.m. and thereafter proceeded for their village. Bahadur Singh PW3 and Lakhi Ram PW4 are the eyewitnesses' who had seen accused/appellant and the deceased quarrelling with each other. The accused/appellant threw a stone on the deceased and he sustained the injury on his head and he fell down at the spot. Bahadur Singh PW3 has a field near the place of occurrence. Both the eyewitness are known to the accused/appellant and deceased. Khajan Singh PW5 is the scribe of F.I.R. He has scribed the report on the dictation of the informant Mani Ram. Dr. I.F. Nath PW6 is the medical officer who conducted the post-mortem of dead body of the deceased. Smt. Raj Kumari PW7 is the wife of deceased. Mitthan Singh PW8 is the witness in whose presence the accused/appellant was arrested. Satendra Singh Sirohi PW9

was posted as S.I. in P.S. Cantt, Dehradun. He was deputed for the arrest of the accused/appellant. He has also prepared the inquest report Ex.Ka.5. S.O. Rajpal PW11 is the investigating Officer of the case who investigated the case. Later on the investigation was transferred to Sub-Inspector Sukhdev Singh due to transfer of S.O. Rajpal PW11. Constables Ansuiya Prasad PW10 and Isam Singh PW12 are the formal prosecution witnesses.

5. The accused-appellant was examined u/s 313 Cr.P.C. and he has pleaded not guilty to the offence. He has stated that he has falsely been implicated in this case. He has further stated in his statement that there was Yuvak Gram Kalyan Samiti in his village in which he was a member and his brother Vijendra Kumar Sharma DW1 was President. There was illicit distillation of liquor in that area, therefore, he made complaints with the police but the police did not take any action. Thereafter, he reported the matter to District Magistrate. As such, the police personnel had enmity with him. He has further stated that a canal was being constructed in his village in which the contractors were selling cement illegality. He made complaint in this regard and the cement was apprehended but the police did not take any action against the contractors. The contractors were annoyed with him, as such, he has falsely been implicated in this case with the collusion of police. He has further stated that he was not present at the place of occurrence on the date of incident.

6. The accused/appellant in his defence examined Bijendra Kumar Sharma as DW1. He is the elder brother of

accused/appellant. He has stated that his brother accused/appellant has falsely been implicated in the case by the police.

7. The learned Sessions Judge on appreciation of the evidence held the accused-appellant guilty and convicted and sentenced him as mentioned above.

8. We have heard learned counsel for the parties and perused the record.

9. At the outset, it needs to be mentioned here that it is not disputed that the deceased Surat Singh died on account of injury sustained by him on the date of occurrence. Dr. I.F. Nath PW6 is the Medical Officer who conducted the postmortem of deceased Surat Singh on 02.04.1983 at about 4:30 p.m. and found the following ante mortem injury on the person of the deceased:-

> *"1. The face and head is flattened from side to side. There are multiple irregular lacerated wounds all over. The face is disfigured and right eye could not be made out. All the bones of skull, base of skull and mandible are pulverized and the brain matter is seen flowing out from all the wounds."*

In the opinion of Medical Officer, the death of the deceased was caused due to shock and haemorrhage as a result of ante mortem injury. The doctor has also opined that the injury may be caused by stone in between 8:00 to 9:00 p.m. on 01.04.1983. Thus, it is amply proved that the deceased died on account of the injury sustained by him on the date of occurrence.

10. Now we have to consider as to whether the accused/appellant Dhirendra Kumar @ Dhiroo is responsible for the injury caused on the person of the deceased Surat Singh who succumbed to his injury. The prosecution case rests on direct evidence as well as on the circumstantial evidence. The prosecution in order to prove its case has adduced the evidence of eyewitness Bahadur Singh PW3 who is the resident of village Jantanwala. He has deposed in his evidence that he had taken field of Ratan Singh near the place of occurrence and crop of wheat was growing up in the said field. He used to go in the field in the night in order to protect the crop from the wild animals. On the date of occurrence at about 8:00 to 8:30 p.m., Lakhi Ram PW4 resident of Badhikheel village came from village Jantanwala. He met Bahadur Singh PW3 on the way near his aforementioned field and both of them started talking with each other. They have also smoked. When they were talking with each other, the accused/appellant and the deceased came from Jantanwala side. They were quarrelling and abusing each other. When the accused/appellant and the deceased reached near the field of Bahadur Singh PW3, both of them started pelting stones on each other. He further stated in his evidence that in the meantime, the accused/appellant dealt a stone on the person of the deceased by which the deceased Surat Singh sustained the injury and fell down on the ground. Bahadur Singh PW3 tried to intervene in the melee but the accused/appellant threatened him and asked him to go away from the place of occurrence otherwise he would cause injury on him. On hearing this, Bahadur Singh PW3 went towards his field leaving accused/appellant and deceased at the place of occurrence. He has further stated that on the next day, he

came to know that Surat singh was lying dead near the place of occurrence. He informed this fact to Mani Ram, father of the deceased next day. The prosecution has also adduced the evidence of other eyewitness Lakhi Ram PW4. He has corroborated the evidence of Bahadur Singh PW3 on all material particulars. Lakhi Ram PW4 has also stated in his evidence that he has also tried to intervene in the melee but the accused/appellant threatened him and asked him to go away otherwise he would have to fact dire consequences. He saw the accused/appellant throwing stone upon the deceased by which the deceased fell on the ground. This witness has also identified stone Ex.1 by which the accused/appellant has caused the injury on the person of the deceased. He has also deposed that the accused/appellant also asked them not to disclose this fact to anybody and if they disclosed this fact to anybody, he would kill them. This witness has also deposed that the accused/appellant was a criminal.

11. We have gone through the entire evidence of prosecution eyewitnesses, Bahadur Singh PW3 and Lakhi Ram PW4. Both of the witnesses have corroborated each other in all material particulars. The learned Trial Court found the evidence of Bahadur Singh PW3 and Lakhi Ram PW4 to be implicitly truthful and reliable though their presence was attempted to be shown as doubtful. Bahadur Singh PW3 had a field near the place of occurrence where he had sown wheat crop. The sowing of wheat crop by Bahadur Singh PW3 had not been disputed by the defence. He is a natural witness to be present at the spot. Lakhi Ram PW4 was coming from his village and he met Bahadur Singh PW3 on the way and both of them started taking with each other. The evidence of Lakhi Ram PW4 is consistent, cogent and

credible. The presence of Lakhi Ram PW4 at the spot is also natural. The presence of Bahadur Singh PW3 and Lakhi Ram PW4 at the place of incident was explained and their evidence cannot be thrown out as unreliable or tainted. Both the witnesses are reliable and the prosecution case disclosed by them is supported by their statement made before the police u/s 161 Cr.P.C. as well as in court. They have supported the prosecution case in all material particulars and no infirmity could be pointed out in their evidence. There were some marginal variations in the testimony of these witnesses given in the Court. The learned Trial Court has noticed these marginal variations while appreciating the evidence of both the witnesses. The minor discrepancies are bound to creep in the testimony of truthful, natural and reliable witnesses when they speak about the details. We have gone through the entire evidence and the contradictions pointed out by the learned Amicus Curiae for the appellant. Unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. It is quite natural that the persons narrate the story in different ways and in different words at different times. The minor discrepancies are bound to creep in the testimony of natural and reliable witnesses. The minor discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. The discrepancies which have been pointed out by the Amicus Curiae for the accused/appellant in the evidence are on account of normal errors of memory due to mental disposition due to the death of the deceased. By and large the people cannot accurately

recall the sequence of the events which took place in short span and reproduce the sequence of events before the Investigating Officer or the Court. In the instant case, the witnesses have narrated the main purport of the incident. The learned Amicus Curiae for the accused/appellant further could not demonstrate us any material contradictions or variations which could lead us to take the evidence of Bahadur Singh PW3 and Lakhi Ram PW4 as unreliable. The defence counsel has cross examined both the eyewitnesses at length but nothing could be elicited in their cross examination to discredit their evidence. Their evidence is consistent and believable. Both the witnesses have come forward with the vivid account of the incident as to how the deceased sustained the injury on his person. After going through the entire evidence of Bahadur Singh PW3 and Lakhi Ram PW4, we do not find any reason to disbelieve version of the prosecution witnesses. We are completely in agreement with the findings recorded by the trial court.

12. The prosecution in support of its case also produced the evidence of Lal Singh PW2 only to corroborate the fact that the accused/appellant and the deceased went together on 01.04.1983 at about 7:30 or 7:45 p.m. from his shop to their village. The prosecution adduced the evidence of Lal Singh PW2 who had stated that he had a shop at Jantanwala and he also runs a bicycle stand. He had further stated that the people coming from their village keep their bicycles with him and when they returned from the city they took their bicycle. He has further stated that on 01.04.1983, the deceased came to his shop in the morning and he kept his bicycle with him and went to the city. In the evening at about 7:30 or 7:45 p.m. on 01.04.1983 the accused/appellant and the deceased

came to his shop and the deceased took his bicycle from the stand. He has further stated that he knew the deceased and the accused/appellant since before. They said to him that they would be going to their village and they left to their village. He has further stated that on the next day, he came to know that the deceased was lying on the road near Joon River. He also went at the place of occurrence where the dead body was lying and he informed Mani Ram, father of the deceased that his son Surat Singh and the accused/appellant went to their village in the evening from his shop. Thus, the prosecution has led this evidence to show that the deceased was in the company of the accused/appellant at about 7:30 or 7:45 on 01.04.1983 in the evening and they went together to their village and thereafter the dead body of Surat Singh was found lying on the road on the next day. It is well settled position of law that last seen theory comes into play where the time gap between the point of time when the accused/appellant and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused/appellant being the author of the crime becomes impossible. The evidence of Lal Singh PW2 that accused/appellant and the deceased went together at about 7:45 p.m. on 01.04.1983 to their village. It is also in the evidence that on the next day the dead body of Surat Singh was recovered lying on the road near the river. Dr. I.F. Nath PW6, Autopsy Surgeon has clearly stated that the death could have occurred at about 8:00 to 9:00 p.m. on 01.04.1983. Thus, this circumstance further corroborated the theory of the prosecution. As we have noticed above that the prosecution has established that the deceased was last seen in the company of the accused/appellant at about 7:30 to 8:30 p.m. by Lal Singh

PW2, Bahadur Singh PW3 and Lakhi Ram PW4. It is also established that the accused/appellant and the deceased were quarrelling with each other and they were hurling abuses on each other. It is also established in the evidence that the accused/appellant and the deceased were pelting stones on each other and the deceased sustained the stone injury on his person by throwing of a stone by the accused/appellant due to which the deceased Surat Singh fell down on the ground. Thereafter, the dead body was found lying on the road at the place of occurrence where lastly the quarrel was seen by Bahadur Singh PW3 and Lakhi Ram PW4. Thus, it is apparent that the deceased was in the company of the accused/appellant till 8:30 p.m. It is also established that there was quarrel in between the accused/appellant and the deceased. The aforesaid fact has been established by the evidence of Bahadur Singh PW3 and Lakhi Ram PW4. Thereafter, the deceased was never seen alive and his dead body was found in the morning on 02.04.1983. In the aforesaid circumstances, it was obligatory on the part of the accused/appellant to satisfy the court as to when and in what manner the deceased parted the company of the accused/appellant. An explanation should have come from the side of the accused/appellant in this case. In the instant case, the entire evidence of last seen adduced by the prosecution was put to the accused/appellant u/s 313 Cr.P.C. He has admitted that he was arrested on 2nd April, 1983 at about 9:00 a.m. from the place of occurrence but he had merely denied the entire evidence. The accused/appellant has failed to discharge his obligation. In the statement recorded u/s 313 Cr.P.C. he has not taken any specific stand whatsoever. He has not given any explanation in this regard. On the contrary, the prosecution has been able to establish

the fact that on the date of occurrence, the deceased was in the company of accused/appellant. We have noticed that the prosecution has established this fact by credible and cogent evidence. We are completely in agreement with the findings recorded by the Trial Court that the prosecution has established that on the date of the occurrence the deceased came to the shop of Lal Singh PW2 alongwith the accused/appellant. Thereafter, they went together towards their village. When they reached near the place of occurrence, a scuffle took place in between then and they started pelting stones on each other. It is also established by the evidence of Bahadur Singh PW3 and Lakhi Ram PW4 that the accused/appellant dealt a stone blow on the head of the deceased by which the deceased fell on the ground. The accused/appellant also told Bahadur Singh PW3 and Lakhi Ram PW4 to leave the place of occurrence and not to intervene in the melee to save the deceased otherwise they would have to face dire consequences. They were also threatened not to disclose this fact to any other persons. It is also in the evidence that the accused/appellant was criminal. Therefore, in absence of any specific explanation from the accused/appellant in this regard and in view of the evidence of Bahadur Singh PW3 and Lakhi Ram PW4 against the accused/appellant having been proved by the prosecution, an adverse inference will have to be drawn against the accused/appellant as to his part in the missing of the deceased Surat Singh. The Hon'ble Apex Court has held in catena of decisions that if the prosecution establishes that the missing person was last seen in the company of the accused and was never seen alive thereafter then it is obligatory on the part of the accused to explain the circumstances in which the missing person and the accused parted company. The

Hon'ble Apex Court in the case of **Joseph Versus State of Kerala (2000) 5 SCC p/197** has held as under :-

> "*14. The incriminating circumstances enumerated above unmistakably and inevitably lead to the guilt of the appellant and nothing has been highlighted or brought on record to make the facts proved or the circumstances established to be in any manner in consonance with the innocence at any rate of the appellant. During the time of questioning under Section 313 CrPC, the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed…..*"

13. The Apex Court in the case of **Mani Kumar Thapa Vs. State of Sikkim** reported in **2002 SCC (Cri) 1637** has held in para 6 as under:-

> "*6. …….. If we analyse the prosecution evidence further, it is seen that in regard to traveling in the jeep from where they picked up the deceased then on to Ramam Checkpost and back, we see the appellant has given 3 different versions on 3 different occasions. To PW 5 he stated that while taking the deceased towards Singla from the checkpost, he allowed him to run away from the jeep after they crossed Ramam Checkpost when A-1 had got down from the jeep to ease himself. To PW 36 he told that when they were bringing a smuggler from Darjeeling side to Ramam Checkpost i.e. from the opposite direction the smuggler escaped from the jeep and in the process of running he fell down and suffered fatal injuries. In his statement under Section*

313 CrPC before the court, he stated that on 12-2-1988 he had gone to Soreng on the orders of his SP as the Chief Minister was visiting Soreng and on the evening of that day as he did not have any vehicle, he took a "lift" in the vehicle of A-1 up to Jorethang from where he went to his quarters and Accused 1 went to Naya Bazar Dak Bungalow as he was camping there on duty. These 3 different versions which are self-contradictory further show that the appellant has not been consistent in his stand as to what happened on 1 2-2-1988. This Court in the case of ***State of Maharashtra v. Suresh, 2000 SCC (Cri) 263*** *has held that a false answer offered by the accused when his attention was drawn to any inculpating circumstance would render such circumstance as capable of inculpating him. The Court also held that in such a situation a false answer can also be counted as providing "a missing link" in completing the chain. If the said principle in law is to be accepted, the statement of the appellant made under Section 313 CrPC being palpably false and there being cogent evidence adduced by the prosecution to show that the appellant had given two other versions as to the incident of 12-2-1988, we will have to proceed on the basis that the appellant has not explained the inculpating circumstances established by the prosecution against him which would form an additional link in the chain of circumstances. ……."*

14. The Hon'ble Apex Court in the case of **Sahadevan Vs. State represented by Inspector of Police, Chennai** reported in (**2003) 1 SCC 534** has held in para 19 as under:-

"19. The last circumstance relied on by the courts below pertains to the stand taken by the appellants in the trial as to parting company with Vadivelu. Here we must notice that as discussed hereinabove, the prosecution has established the fact that Vadivelu was seen in the company of the appellants from the morning of 5-3-1985 till at least 5 p.m. on the same day, when he was brought to his house and thereafter his dead body was found in the morning of 6-3-1985. Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that

a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever. In the evidence of PW 25, it is elicited that on 5-3-1985 in the afternoon when Vadivelu was produced before the said witness, he after interrogation allowed Vadivelu to go, but then it is found from his evidence that he instructed A-1 to keep a watch over Vadivelu. In such circumstances, it was incumbent upon A-1 to have explained to the court in what circumstances they parted company. He has not given any explanation in this regard. On the contrary, the prosecution has established the fact that on the very day at about 5 p.m., Vadivelu was brought to the house of PW 1 by the appellants which was seen by PW 5. This part of the evidence of PW 5 has gone unchallenged in the cross-examination and, therefore, we will have to proceed on the basis that, what is stated by PW 5 in this regard is true. If that be so, the prosecution has established the fact that on 5-3-1985 at 5 p.m. Vadivelu was still in the company of these appellants and, therefore, in the absence of any specific explanation from the appellants in this regard, and in view of the other incriminating circumstances against the appellants having been proved by the prosecution, an adverse inference will have to be drawn against these appellants as to their part in the missing of Vadivelu. At this point, it may be relevant to note that though no specific stand has been taken by the appellants as to their parting company with Vadivelu, in their statement under Section 313 CrPC, it is seen from the evidence of PWs 1 and 5 that A-1 told the said witnesses on the night intervening between 5-3-1985 and 6-3-1985 that Vadivelu had escaped from the police station when he was allowed to sleep in the verandah of the police station. This explanation given by A-1 to PW 1 which was also heard by PWs 5 and 14, clearly shows that the same is totally false and obviously was an excuse made by the appellants to conceal the true facts and, therefore, this circumstance of A-1 making a false statement to PW 1 can also be taken as a circumstance against the appellants, in establishing the appellants' guilt. This C ourt in more than one case has held, that if the prosecution, based on reliable evidence, establishes that

the missing person was last seen in the company of the accused and was never seen thereafter, it is obligatory on the accused to explain the circumstances in which the missing person and the accused parted company. (See Joseph v. State of Kerala, 2000 SCC (Cri) 926) Therefore, we are in agreement with the finding of the courts below that Circumstance 7 also stands established against the appellants."

15. The prosecution has led the evidence that the accused/appellant was arrested by Satendra Singh Sirohi PW9 on 02.04.1983 at about 3:00 p.m. near Hariyawala School. Satendra Singh Sirohi PW9 was deputed by S.O. Rajpal PW11 (investigating officer) to make the arrest of the accused/appellant. The prosecution has also adduced the evidence of Mitthan Singh PW8 in whose presence the arrest was made by Satendra Singh Sirohi PW9. These witnesses have stated that the accused/appellant was arrested on 02.04.1983 at about 3:00 p.m. near Hariyawala School. At the time of arrest, there were marks of injuries on the person of the accused/appellant and the accused/appellant was wearing blood stained shirt. The shirt was slightly wet. The said shirt was taken into possession by Satendra Singh Sirohi PW9 and fard Ex.Ka-4 was prepared. After the arrest, the accused/appellant was taken to the Investigating Officer Sri Rajpal PW11. The Investigating Officer sent the accused/appellant to Doon Hospital for medical examination. Dr. D.M. Kala, Medical Officer examined the injuries of the person of accused/appellant. The following injuries were found on the person of the accused/appellant:-

1. Abraded contusion 3 x 2.5 cm. just above right eyebrow.

2. Abraded contusion 8 cm. x 2.5 cm. on right side of face inusliry the area just below and lateral to right eye.

3. Abrasion 4 cm. x 1 cm. on right side of face 2 cms. from right angle of mouth.

In the opinion of Medical Officer, the injuries were caused by hard & blunt object or friction about one day before. Injury No. 1 and 2 was kept under observation while injury no. 3 was simple. The accused/appellant has stated in his statement recorded u/s 313 Cr.P.C. that he was arrested at about 9:00 a.m. on the next day of the incident i.e. 02.04.1983 from the place of occurrence. The accused/appellant had led evidence of Vijendra Kumar Sharma DW1 to support this fact whereas the prosecution has adduced the credible and cogent evidence to prove that the accused/appellant was arrested on 02.04.1983 at about 3:00 p.m. near Hariyawala School. The witnesses were cross examined at length but nothing could be elicited in their evidence. Thus, the evidence of the prosecution is credible and cogent. Vijendra Kumar Sharma DW1 has deposed in his evidence before the Court that the accused/appellant went to the place of occurrence on the next date of the incident. When the accused/appellant went to the place of occurrence on the next day there were no mark of injuries on the person of the accused/appellant. It is evident from the evidence that Vijendra Kumar Sharma DW1 is the brother of the accused/appellant and it would always be his endeavour to save his brother from conviction. The version given by Virendra Kumar Sharma DW1, brother of the accused/appellant is not credible and cogent. It is further revealed from the evidence of Dr. D.M. Kala PW1 that the injuries sustained by the accused/appellant may be caused by friction or by some blunt object and all the injuries were one day old. Thus, the theory of the prosecution is further

strengthen by the evidence of the Dr. D.M. Kala PW1 who has examined the accused/appellant and has stated that all the injuries on the person of the accused/appellant were caused on 01.04.1983 in between 7:30 to 8:30 p.m. The evidence of Dr. D.M. Kala PW1 further belies the story of Vijendra Kumar Sharma DW1. Perusal of the defence theory reveals that the accused/appellant sustained the injuries on 02.04.1983 at about 9:00 a.m. It is not corroborated from the evidence of Dr. D.M. Kala PW1. The learned Trial Court was justified in holding that there was no explanation from the defence as to how there were blood stains on the shirt Ex.Ka.4 recovered at the time of arrest of the accused and how the injuries were sustained by the accused/appellant on his face. The serologist in its report found the disintegrated human blood on the said shirt. It was further observed by the learned Trial Court that the injuries were the result of quarrel at the spot between him and the deceased as has been stated by the prosecution. This fact is further fortified from the testimony of the prosecution witnesses namely Bahadur Singh PW3 and Lakhi Ram PW4. Thus, it is evident that the accused/appellant was arrested near Hariyawala school by the police at the identification of Mitthan Singh PW8. The prosecution also led the evidence that at the time of the arrest of the accused/appellant, there were injuries on his face. The injuries found on the person of the accused/appellant further corroborate the prosecution story. The accused/appellant has stated in his statement recorded u/s 313 Cr.P.C. that his elder brother Vijendra Kumar Sharma DW1 was the President of Yuvak Mangal Dal established by him in his village and the accused/appellant was a member of Yuvak Mangal Dal. He has further deposed that there were certain illicit distillations of liquor in the village and he made complaint with regard to

this to the police. He has further stated that the police was in hand and glove with those persons who were involved in the business of illicit distillation of liquor. Vijendra Kumar Sharma DW1 made complaints against the police to the District Magistrate. He has further deposed that the contractors who were constructing the canal in the village had been selling the cement illegally. Complaint to that effect was also made to the police but the police did not take any action against them. Thereafter, complaint was made to the higher authorities to that effect. As such, the appellant has been implicated falsely. To prove this averment, the accused/appellant has adduced the evidence of his brother Vijendra Kumar Sharma DW1. Vijendra Kumar Sharma DW1 has deposed in his evidence that he has constituted Yuvak Gram Kalyan Samiti and he made the complaint to the police regarding the illicit distillation of country made liquor but the police did not take any action. He has also stated that he made complaint to that effect to the Minister, District Magistrate and other senior officer of the department. Perusal of the entire evidence reveals that complaint was made by Vijendra Kumar Sharma DW1 to the higher authorities. There is no dispute that Vijendra Kumar Sharma DW1 is the brother of accused/appellant. The prosecution has adduced the evidence of Bahadur Singh PW3 and Lakhi Ram PW4 who have seen the occurrence. Merely remote enmity of opinion with the police would not discard the evidence of eyewitnesses otherwise found credible and trustworthy. It would be the endeavour of the eyewitnesses to see that the real culprit is punished and they would not implicate wrong person in the crime so as to allow the real culprit to escape unpunished. There is no evidence on record that the prosecution witnesses are the police pocket witnesses. It

would always be the endeavour of Vijendra Kumar Sharma DW1 being the real brother of the deceased to save his younger brother from the conviction. We have gone through the entire evidence of Vijendra Kumar Sharma DW1. The trial court was justified in holding that the evidence of Vijendra Kumar Sharma DW1 is unreliable. We are completely in agreement with the findings recorded by the learned trial court. As such, the evidence of Vijendra Kumar Sharma DW1 is not credible and cogent. As we have noticed that the evidence of the prosecution is trustworthy and credible.

16. The learned Amicus Curiae for the accused/appellant contended that Lakhi Ram PW4 has stated in his cross examination that after the incident he came to his house from the place of occurrence. He did not think it proper to inform the father of the deceased regarding the occurrence. It was further contended that the witnesses neither informed to their villagers nor to their family members regarding the occurrence. Learned G.A. refuted the contention. Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. It is also in the evidence that the accused/appellant was a criminal but there is no effective cross examination of the witnesses on the point as to whether he was a criminal or not. It is also pertinent to mention that Bahadur Singh PW3 and Lakhi Ram PW4 are not related to the deceased. It is also in the evidence that the accused/appellant has threatened the

witnesses to remain silent and asked them to leave the place of occurrence. Thus, the silence as pointed out in not telling the fact to the others in the night for some time cannot in the circumstance of the case be held to be suspicious or unnatural. The Hon'ble Apex Court in the case of **State of U.P. Vs. Devendra Singh reported in 2005 SCC (Cri) 582** has held at para 7 as under:-

> "*7. As rightly noted by the trial court, the witness was a young lad and according to his testimony the accused was a hardened criminal with records of violence. It is his evidence that he was threatened by the accused, therefore, his silence in not telling others for some time, cannot, in the circumstances of the case, be held to be suspicious and unnatural. Further, the High Court erred in observing that he had stated during examination about his having not seen the occurrence and later on clarifying that he did so because of threats given by the accused. PW 4 nowhere stated of his having not seen the occurrence. The High Court also committed another error in holding that the witness refused to be cross-examined. This fact is also not borne out from the record*"

In view of the above, we do not find any force in the contention of the learned Amicus Curiae.

17. It was further contended by the learned Amicus Curiae that Lakhi Ram PW4 is in the relation of the complainant and Bahadur Singh PW3 also keeps ill-will against the accused/appellant so they are deposing false against the accused/appellant. Learned G.A. refuted the contention. Smt. Raj Kumari PW7 widow of the deceased Surat Singh has stated in her evidence that Bhopal Singh is the uncle of deceased Surat Singh. She has further stated that she does not know whether daughter of Bhopal Singh was married with Balbir Singh. She has further admitted that Balbir Singh is the younger brother of Lakhi Ram PW4. The learned trial

court after going through the entire evidence of Smt. Raj Kumari PW7 has rightly held that relationship between the deceased and Lakhi Ram PW4 has not been established. Bahadur Singh PW3 has stated in his cross examination that his *Samdi* Keshar Singh was a contractor in Tehri District. Contractor Keshar Singh paid Rs. 10 per day as wages to Bahadur Singh PW3 for the payment of wages to the labourers but Bahadur Singh PW3 paid Rs. 9 per day to all the labourers. He also stated that accused/appellant was also working with Keshar Singh as labourer. The labourers protested the payment of lesser wages at the behest of the accused/appellant. He has also stated in his evidence that there was no quarrel for the same. The witness is a natural and straight forward. Bahadur Singh PW3 has clearly stated that there was no quarrel between him and the accused/appellant. His evidence reveals that he had stated the correct facts. If he would have been the tutored or got up witness, he could have denied this fact. Thus, we do not find that the witness was inimical to the accused/appellant. His presence at the spot is natural. It is well settled that the evidence of witnesses cannot be discarded merely on the ground that they are either partisan or interested or closely related to the deceased or the witnesses, if the witnesses are otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty can escape nor the innocent is wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and truthful it can be acted upon. If it is found to be improbable or suspicious it ought to be rejected. In the instant case, nothing has been elicited in the cross examination of Bahadur Singh PW3 and Lakhi Ram PW4 to discredit their evidence and their evidence stands

corroborated from the medical evidence of Dr. I.F. Nath PW6. Their evidence is credible and cogent. Similarly Lakhi Ram PW4 being the relative of deceased, it would be his endeavour to see that the real culprit is punished and he would not implicate wrong person in the crime so to allow the real culprit to escape unpunished. Thus, the evidence of Lakhi Ram PW4 could not be rejected on the ground that he is closely related to the deceased. The **Apex Court in the case of State of Punjab Vs. Karnail Singh** reported in **2004 SCC (Cri) p/135** has held as under :-

> "*8. We may also observe that the ground that the witnesses being close relatives and consequently, being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh v. State of Punjab reported in AIR 1953 SC 364 in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J., it was observed: (AIR p. 366, para 25)*
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> > *25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – Rameshwar v. State of Rajasthan reported in AIR 1952 SC 54 (AIR at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel.*"
>
> *9. Again in Masalti v. State of U.P. AIR 1965 SC 202 this Court observed: (AIR pp. 209-10, para 14)*

> *"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."*

18. Learned Amicus Curiae for the accused/appellant further contended that the prosecution has led the evidence that two days before the occurrence, the accused/appellant went to the house of the deceased and tried to drag him out on the pretext that the deceased had teased her aunt on the day of Holi Celebration. The accused/appellant threatened the deceased of dire consequences. It was further contended that as to why the accused/appellant and the deceased would go together to the village on the date of the incident. Learned G.A. refuted the contention. The prosecution has led the evidence that the accused/appellant reached at the shop of Lal Singh PW2 and thereafter they left for their village simultaneously. There is no evidence that the accused/ appellant and the deceased left the shop of Lal Singh PW2 together in friendly manner. It may be a chance that the accused/appellant and the deceased reached in the shop of Lal Singh PW2 together and thereafter they proceeded for their village. The defence has not made the effective cross examination of the witnesses on this point. Learned Trial Court was justified in rejecting the said contention of the learned counsel for the accused/appellant.

19. The learned Amicus Curiae for the accused/appellants contended that even if the evidence of the prosecution was found credible and cogent, the accused/appellant is entitled to get the benefit of doubt as the prosecution has failed to prove any motive to cause injury on the person of the deceased. Learned G.A. refuted the contention. The prosecution has adduced the evidence of Smt Raj Kumari, wife of deceased who has stated in her evidence that on 28.03.1983 at about 8:30 p.m., the accused/appellant came to her house and he wanted to drag her husband Surat Singh deceased out. The accused/appellant was telling that the deceased had teased his aunt Km. Sunita. The accused/appellant caught hold of the hand of deceased and started to drag him out. Smt. Raj Kumari PW7 and her father-in-law prevented the accused/appellant from dragging the deceased out from the house. While going from there, the accused/appellant had threatened with dire consequences. Mr. Mitthan Singh PW8 has also stated that on 28.03.1983 at about 9:00 or 10:00 p.m. he was singing holi alongwith other persons. When he reached alongwith other person near village Birodhi, he met with the accused/appellant. The accused/appellant was very much annoyed and he told him that the deceased had teased his aunt Km. Sunita on the day of Holi by knocking her doors when she was all alone in her house. It is also pertinent to mention here that Mani Ram, the father of deceased has died during the trial. The evidence of the prosecution is credible and cogent and nothing could be elicited during the cross examination by the defence to discredit their evidence. The Court also summoned Km. Sunita CW1. She had deposed that she is the aunt of the accused/appellant. She had denied the fact that the deceased came to her house and

teased her. She is related to the accused/appellant and it is natural that she would never depose against the accused/appellant. The accused/appellant has stated in his statement recorded u/s 313 Cr.P.C. that he was not present in his village on the occasion of Holi in the year 1983. The defence has adduced the evidence of Vijendra Kumar Sharma DW1, real elder brother of the accused/appellant. He has stated that on the day of holi, the accused/appellant was not present in his village and he came from Bombay to his village on 30.03.1983. The learned Trial Court had rightly disbelieved the evidence of Vijendra Kumar Sharma DW1 by observing that during the cross examination he has deposed that accused/appellant came from Bombay by train and he had reservation for the same. Perusal of the record reveals that the defence has not produced the train reservation by which the accused/appellant came to his village from Bombay. It would have been the best evidence. In absence of such evidence merely the evidence of Vijendra Kumar Sharma DW1 that the accused/appellant was in Bombay on the date of occurrence cannot be relied upon. It is amply established by the evidence of prosecution that the accused/appellant was annoyed with the deceased and he went to his house on 28.03.1983 in the night at about 8:00 p.m. and he wanted to drag him out but Mani Ram, father of the deceased and Smt. Raj Kumari, widow of the deceased prevented him. The accused/appellant went from their house after giving threat of dire consequences. Thus, the motive for the commission of the offence is amply proved.

20. Assuming for the sake of argument that the prosecution has failed to prove the sufficient motive against the accused/appellant. When the eyewitnesses of the occurrence

consistently supported the prosecution case, the question of motive would have lost its importance. It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. It is also well settled that establishment of motive is not *sine qua non* for proving the prosecution case. In the case of **Baboolal Vs. State of U.P. 2001 SCC (Cri) 1484,** the deceased was sitting inside the teashop of one Abdul Nabi. On the opposite side of road, there was a sweetmeat shop and all the accused were sitting inside it. As the radio was being played on a high pitch, an exchange of words took place between those who were sitting in the teashop and the accused. The accused threatened PW1 and others for raising this petty issue. A little later the deceased reached there and on coming to know of the development of the incident, he expressed his resentment at the incident on such a petty issue. On this, the accused moved forward with a pistol accompanied by the second accused and another person with daggers in their hands and fired upon the deceased. The Hon'ble Supreme Court has held as follows:-

> *"8. Learned counsel rightly contended that on such a petty quarrel, no sensible person would have used such a lethal weapon and killed the victim. How the mind of an assailant reacted is not possible to be fathomed from a detached reflexion. As pointed out by this Court* ***in Nathuni Yadav v. State of Bihar 1998 SCC(Cri) 992:****"*

"Many a murders have been committed without any known or prominent motive. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant."

21. In the case of **Thaman Kumar Vs. State of Union Territory of Chandigarh 2003 SCC (Cri) 1362,** the Hon'ble Apex Court has held that :-

"*18. Shri Sushil Kumar has drawn our attention to certain findings recorded by the learned Sessions Judge and has urged that he had rightly given benefit of doubt to the appellants and the High Court committed manifest error of law in reversing the aforesaid findings and convicting and sentencing the appellants while hearing an appeal against acquittal. The learned counsel has urged that the prosecution has failed to prove any motive on the part of the appellants to commit the crime. It is true that the only witness examined on the point of motive, namely, PW 7 Sardara Singh, who is the brother of the deceased, turned hostile and did not support the prosecution case. In his statement under Section 161 CrPC he had said that the deceased used to get commission for bringing customers to the guest house and he owed about Rs 42,000 in that account and some dispute had taken place with the owner when he had demanded his money. However, in his statement in Court he denied to have given any such statement. There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved. In State of* ***H.P. v. Jeet Singh 1999 SCC (Cri) 539*** *it was held that no doubt it is a sound principle to remember that every criminal act was done with a motive but is corollary is not that no offence was committed if the prosecution failed to prove the precise motive of the accused to commit it, as it is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an*

offender towards the person whom he offended. In ***Nathuni Yadav v. State of Bihar 1998 SCC (Cri) 992*** *it was held that motive for doing a criminal act is generally a difficult area for prosecution as one cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act and such impelling cause need not necessarily be proportionately grave to do grave crimes. It was further held that many a murder have been committed without any known or prominent motive and it is quite possible that the aforesaid impelling factor would remain undiscoverable. In our opinion, in the facts and circumstances of the case, the absence of any evidence on the point of motive cannot have any such impact so as to discard the other reliable evidence available on record which unerringly establishes the guilt of the accused."*

22. It was held by the Hon'ble Apex Court in **Yunus Vs. State of M.P. 2003 (1) SCC 425**:-

"*The prosecution in the present case has failed to prove the motive. Failure to prove motive for crime in our view is of no consequence. The role of the accused persons in the crime stands clearly established. The ocular evidence is very clear and convincing in this case. The illegal acts of the accused persons have resulted in the death of a young boy of 18 years. It is also well settled law that establishment of motive is not sine quo non for proving the prosecution case.*"

23. The Hon'ble Apex Court has affirmed the above view in its latest decision in the case of **Bhimapa Chandappa Hosamani Vs. State of Karnataka 2007 (1) SCC(Cri) 456).** The Hon'ble Apex Court has held in **Ramkrushna Vs. State of Maharashtra 2007 AIR SCW 3134** that:-

"*18. The High Court might not have dealt with the question of motive elaborately but when the presence of the appellant with Balram has been established, motive takes a back seat. Appellant must have come to the place of occurrence. He came with a knife. The knife injuries were found. Even if the prosecution has not*

been able to establish as to the exact role played by each of the accused, the fact that both the accused had common intention to commit the crime stood established. Submissions of the learned counsel for the State in this behalf are of some significance. The learned Trial Judge as also the Trial Court cannot be said to have committed any error in relying upon the testimony of the P.W.3 in part. It is in our opinion permissible in law. (See ***Soma Bhai Vs. State of Gujarat AIR 1975 SC 1453****)*"

Therefore, we do not find any force in the contention raised by learned Amicus Curiae for the accused/appellant.

24. It was further contended that from the facts and circumstances of the case no offence under section 302 I.P.C. is made out against the accused/appellant Dhirendra Kumar @ Dhiroo. It was further contended that at the most even if the evidence was found credible against him, the offence punishable under section 304 part-II IPC is only made out against the accused/appellant. The learned G.A. refuted the contention. The pivotal plea taken by the appellant relates to the applicability of Exception 4 of 300 IPC. For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by First Exception. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel manner, and (d) the fight must have been with the person killed.

25. In **Virsa Singh Vs. State of Punjab AIR 1958 SC 465 & 1958 Cr.L.J. 818,** the Hon'ble Supreme court has held that a culpable homicide is a murder under section 300 clause III. If the prosecution establishes four elements – (i) the presence of a bodily injury, (ii) nature of such bodily injury, (iii) intention on the part of the accused to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and (iv) the injury was sufficient to cause death in the ordinary course of nature. Dealing with the question, as to how intention is to be inferred, Vivian Bose J. succinctly stated :-

> "*In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. …..*
>
> *The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to*

do with the question whether the prisoner intended to inflict the injury in question."

26. The intention which is a state of mind cannot be proved by the direct evidence as a fact it can only be inferred from the facts and circumstances of each case. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under section 302 or 304 Part-I or 304 Part-II. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. In the present case, as noticed above, there was previous enmity between the parties. The accused/appellant threw stone with great force, causing injury on the body of the deceased, which is sufficient in the ordinary course of nature to cause death. Dr. I.F. Nath PW6, the autopsy surgeon has stated that the ante mortem injury found on the head of the deceased reveals that the face and head was flattened from all sides. Perusal of the ante

mortem injury reveals that the accused/appellant not only caused the injury by throwing the stone only but also disfigured & flattened the face and head of the deceased. The brain matter was flowing out from all wounds. The injury reveals that the accused/appellant has taken undue advantage and has acted in cruel and unusual manner. Where the offender takes undue advantage or has acted in cruel or unusual manner, the benefit of Exception 4 cannot be given to him. The intention of accused/appellant to cause death or at all events intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death was made out. The circumstances to bring the case under Exception 4 to Section 300 do not exist. Thus, we have no hesitation to hold the accused/appellant guilty under section 302 IPC. We are completely in agreement with the findings recorded by the trial court with regard to the conviction of accused/appellant under section 302 IPC.

27. On a conspectus of various relevant features of this case including the genesis; the nature of the incident; the nature of injury caused by the accused/appellant at the time of occurrence, it cannot be concluded from the prosecution evidence or from any probability arising from the record that the accused/appellant had falsely been implicated in this case. After going through the same, we do not find any reason to disbelieve the version of the prosecution witnesses. We are completely in agreement with the findings recorded by the trial court and we find that the prosecution has been able to establish the case beyond reasonable doubt. Thus, we do not find any force in the contention of the learned counsel for the accused/appellants.

28. In view of the aforesaid reasons, we hold that the prosecution has established the guilt beyond reasonable doubt against the accused/appellant. We find that the learned trial court has rightly convicted and sentenced the accused/appellant and there is no infirmity in the impugned judgment and order passed by the learned trial court in Sessions Trial No. 64 of 1983. The accused-appellant is liable to be convicted and sentenced as awarded by the trial court. Hence, the appeal is liable to be dismissed and is hereby dismissed.

29. The accused/appellant Dhirendra Kumar @ Dhiroo is on bail. His bail is cancelled. He shall be taken into custody forthwith by the court concerned to make him serve out the sentence as awarded against him.

30. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months from the date of receipt of order.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 17th November, 2007
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